

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MATTHEW ADKISSON, an individual,

Plaintiff,

v.

EPIK HOLDINGS, INC., a Washington  
Corporation; EPIK INC., a Washington  
Corporation; MASTERBUCKS LLC, a  
Wyoming company; ROBERT W.  
MONSTER, an individual; and BRIAN  
ROYCE, an individual,

Defendant.

No. 2:23-cv-00495 MJP

[PROPOSED] TEMPORARY  
RESTRAINING ORDER

THIS MATTER came before the Court for hearing on Plaintiff Matthew Adkisson's Motion for a Temporary Restraining Order against Defendants Epik Holdings, Inc., Epik, Inc., Masterbucks LLC, Robert W. Monster, and Brian Royce ("collectively Defendants"). Now, the Court having considered Plaintiff's motion, the declarations of David A. Perez, Matthew Adkisson, Debra Elliott, Derek Peterson, and Steve Greenspan, and other evidence provided in support of the motion, and the arguments of counsel, the Court hereby makes the following Findings of Fact and Conclusions of Law.

TEMPORARY RESTRAINING ORDER  
(NO. 2:23-CV-00495 MJP) – 1

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## I. FINDINGS OF FACT

1. Plaintiff Adkisson provided several notices to Defendants that he would be seeking a temporary restraining order with the Court to enjoin Defendants from selling the assets of Epik Holdings, Epik, Inc., and Masterbucks LLC (collectively, “Epik”).

2. The key facts are largely not in dispute. Defendant Robert Monster is a Washington resident and the founder and majority owner of the various Epik-related companies, known as the “Epikverse” which includes Defendants Epik Holdings, Epik Inc. and Masterbucks (collectively, “Epik”).

3. Epik purports to offer a mix of services primarily revolving around services related to domain name registration, renewal and sales, as well as website hosting. Most consumers like plaintiff use Epik for simple and rather quotidian transactions and domain registries.

4. Defendant Brian Royce first began working with Monster and Epik in or around March 2022, later becoming the company’s Executive Vice President of Operations, placing him in charge of the company’s day-to-day operations.

5. Mr. Adkisson is an individual who, in May 2022, needed basic domain registry and escrow services to complete a relatively anodyne purchase: acquiring the domain name <www.nourish.com>. Adkisson Decl. ¶ 2.

6. Mr. Adkisson noticed that the domain name was listed for sale by Epik on Epik.com, and he contacted Monster to purchase the domain. *Id.* Monster informed Mr. Adkisson that to complete the sale, Mr. Adkisson would need to use Epik’s escrow services. *Id.* ¶ 3, Ex. A. Monster reassured Mr. Adkisson that Epik’s “escrow services [was] #1 in the industry” and would be able to “protect buyer and seller.” *Id.* ¶ 3. Based on Monster’s representations, Mr. Adkisson agreed and using services offered on Epik.com, wired Epik \$327,000 to be held in escrow (the “Escrow Funds”). *Id.* ¶ 4.

1           7.       Unbeknownst to Mr. Adkisson, however, neither Epik nor Monster were licensed  
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3 to provide escrow services. And instead of segregating the Escrow Funds, Defendants  
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5 misappropriated the money for other purposes that Mr. Adkisson did not authorize.  
6

7           8.       After nearly six months with no results, on November 14, 2022, Mr. Adkisson  
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9 requested the return of his Escrow Funds. Adkisson Decl. ¶ 7. Royce, who became Epik's CEO  
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11 in September 2022, represented that he would seek to secure the domain name, and expressly  
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13 promised Mr. Adkisson "if [that] does not work then we of course will return the funds."  
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15 Adkisson Decl., Ex. C. Mr. Adkisson relied on this representation and allowed Epik to continue  
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17 to attempt to secure the domain name.  
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19           9.       After no further progress was made in securing the domain name, on December 2,  
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21 2022, Mr. Adkisson explicitly informed Royce and Defendants that he would be ending the  
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23 domain name purchase transaction and again requested that the Escrow Funds be returned. *Id.*,  
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25 ¶ 8, Ex. C. In response, on December 6, 2022, Royce texted Mr. Adkisson and again promised to  
26  
27 have Mr. Adkisson's funds "returned [in] short order[.]" *Id.*, Ex. D. Mr. Adkisson again believed  
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29 and relied on this representation. Still, no payment was forthcoming.  
30

31           10.      Eventually, in early 2023, Epik admitted that it owed Adkisson the \$327,000 it  
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33 had promised to hold in escrow, and that sometime after Adkisson wired the funds to Epik, it  
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35 was misappropriated, embezzled or both. Perez Decl. ¶ 4; Amended Answer ¶ 73. In other  
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37 words, Epik conceded that the Escrow Funds were no longer available. *Id.* Epik further claimed  
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39 that the company was "cash strapped" and that Adkisson's Escrow Funds were misappropriated  
40  
41 and used to pay other debts without his authorization. *Id.*  
42

43           11.      Then, on January 11, 2023, Epik, through counsel, sent Mr. Adkisson a letter via  
44  
45 e-mail promising to repay Mr. Adkisson his escrow funds. Specifically, the letter stated: "On  
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47 behalf of Epik Holdings, Inc., Epik shall pay the debt owed to Mr. Adkisson in two installments,  
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49 one on January 12, 2023, in the amount of \$20,000, and the other no later than January 31, 2023,  
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51 in the amount of \$307,000." Perez Decl., Ex. B; Adkisson Decl. ¶ 10, Ex. E.

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1           12.     On January 12, 2023, Epik (through Monster) paid Mr. Adkisson \$20,000.  
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 3     However, no further payments were made. Adkisson Decl. ¶ 11; Amended Answer ¶ 73.

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 5           13.     On January 31, 2023, Monster contacted Mr. Adkisson’s counsel. He confirmed  
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 7     that the amount owed to Adkisson—\$327,000—was not in dispute. Perez Decl., Ex. D. Further,  
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 9     Monster stated that since Royce became CEO of Epik, Monster “believe[d] the company has had  
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 11     ample opportunity to fund a refund to Mr. Adkisson.” *Id.* Monster identified several sources of  
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 13     funds available to Epik to repay Adkisson including a \$1,000,000 loan, a \$1,000,000 divestiture  
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 15     received by Epik in October 2022, and other assets “amount[ing to] more than \$600,000 in  
 16  
 17     cash.” *Id.* Monster further represented that “in the event that the Company does not, or will not  
 18  
 19     settle the balance due of \$307,000, I am committed to covering this personally, and doing so  
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 21     asap.” *Id.*

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 23           14.     In response to Mr. Adkisson’s Amended Complaint, Epik admits that “Epik owes  
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 25     Adkisson a refund of the \$327,000 in funds he previously transferred to it, and that Epik, though  
 26  
 27     its counsel, acknowledged this during the referenced call [a call with Mr. Adkisson’s counsel].”  
 28  
 29     Amended Answer ¶ 73.

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 31           15.     Although this is not a class action (at least not yet), Defendants’ conduct appears  
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 33     to have victimized many other innocent consumers like Mr. Adkisson. Several consumers have  
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 35     submitted declarations, and many others have reached out to Mr. Adkisson’s counsel about their  
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 37     experiences with Defendants. For purposes of this motion, the Court accepts that Epik’s conduct  
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 39     has affected and continues to affect not only Mr. Adkisson but numerous other consumers,  
 40  
 41     including consumers in Washington.

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 43           16.     On April 11, 2023, shortly after filing his complaint, Mr. Adkisson’s counsel e-  
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 45     mailed Defendants raising concerns that the Epik entities were trying to sell off their assets “in  
 46  
 47     an apparent effort to avoid repayment” to victims like Mr. Adkisson. Perez Decl., Ex. J. Mr.  
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 49     Adkisson’s counsel made clear he would seek “immediate injunctive relief” if the company  
 50  
 51

1 pursued an asset sale. *Id.* Mr. Royce responded right away with the assurance that “[n]o asset  
2 sales are pending at this time.” *Id.*  
3

4  
5 17. On May 13, after learning that the company was pursuing the very asset sale that  
6 Mr. Royce had assured was not “pending,” counsel for Mr. Adkisson again reached out to Epik  
7 and Mr. Monster. *Id.*, Ex. K. In that message, counsel made clear that “this so-called asset sale  
8 will serve only to transfer the valuable assets of the company to a third party, leaving it unable to  
9 re-pay consumers like Mr. Adkisson, causing irreparable harm.” *Id.* Counsel reiterated Mr.  
10 Adkisson’s intention to seek a temporary restraining order. In response, Epik’s counsel  
11 acknowledged the potential transaction, and offered a partial payment only if Mr. Adkisson  
12 “release[d] all claims.” *Id.*  
13  
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15  
16 18. Last week, Defendants disclosed that the potential buyer of Epik’s assets is  
17 Registered Agents, Inc.  
18  
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20  
21 19. On May 30, 2023, the day before Mr. Adkisson filed his motion for a temporary  
22 restraining order, Mr. Monster himself revealed that the proposed transaction is part of a larger  
23 scheme to raid Epik of its valuable assets, and line the pockets of Mr. Royce’s friends and  
24 contacts. Specifically, in an e-mail to Mr. Adkisson’s counsel at Perkins Coie, Mr. Monster  
25 disclosed that Mr. Royce and Epik’s current leadership have “destroyed” the company, and that  
26 in December 2022 Mr. Royce “gifted a bunch of Epik assets” to unnamed individuals with whom  
27 Mr. Royce is affiliated. *Id.*, Ex. L.  
28  
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31 20. Defendants apparently intend on transferring assets from one Epik entity to  
32 another—all to avoid liability. Mr. Monster himself believes that Epik and Registered Agents  
33 (the real contemplated buyer) are “being elusive” about what corporate entities will be involved.  
34  
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36  
37 21. In another message to counsel—also sent the day before this motion was filed—  
38 Mr. Monster reveals that the asset sale “*has been whittled down to a level insufficient to pay*  
39 *everyone*,” and that “there has been an egregious pattern of side deals and self-dealing during the  
40 last 10 months, and that the objective is to wipe it [Epik] all clean.” *Id.*, Ex. M. Mr. Monster calls  
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1 the transaction a “hijack and fire sale,” which will “injure[] many people,” and “a badly executed  
2  
3 hijack operation.” *Id.*

4  
5 22. In response to Mr. Monster’s disclosures, Mr. Adkisson’s counsel immediately  
6  
7 reached out again to Epik’s counsel, urging Epik to hold off on the sale, and that Mr. Adkisson  
8  
9 intended to seek emergency relief. Perez Decl., Ex. N. Epik dismissed the need for an injunction  
10  
11 by assuring Mr. Adkisson he could “veto” the transaction, and because Mr. Adkisson would get  
12  
13 *some money* out of the deal.

14  
15 23. The court does not find either objection persuasive for the reasons discussed more  
16  
17 fully below. Suffice to say that Mr. Adkisson has no real “veto”—as shown by the fact that  
18  
19 Defendants signed the agreements despite Mr. Adkisson’s objections. But more to the point, Mr.  
20  
21 Adkisson is not a party to the asset sale, so he cannot enforce this so-called veto. Likewise, the  
22  
23 potential for a partial payment to Mr. Adkisson is not enough to make him whole. Moreover,  
24  
25 Epik is offering a partial payment only if Mr. Adkisson releases his claims against defendants—a  
26  
27 precondition he is not obligated to accept.

## 28 29 II. CONCLUSIONS OF LAW

30  
31 24. A party seeking a temporary restraining order "must establish that he is likely to  
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33 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
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35 relief, that the balance of equities tips in his favor, and that an injunction is in the public  
36  
37 interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

38  
39 25. Although not dispositive by itself, the first of these factors—likelihood of success  
40  
41 on the merits—is the "most important." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir.  
42  
43 2015) (en banc).

44  
45 26. Both the law and the factual evidence presented to the Court clearly favor  
46  
47 plaintiff’s request for a temporary restraining order.

48  
49 27. Based on the Findings set forth above and the legal standards applicable to  
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51 issuance of a temporary restraining order, a temporary restraining order, is necessary and

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appropriate to preserve the status quo and avoid irreparable harm until the Court may hear and decide plaintiff's motion for a preliminary injunction.

**A. Likelihood of success on the merits.**

28. Mr. Adkisson need only show a likelihood of success on a single claim to meet this element for a temporary restraining order. The Court finds that he has shown a likelihood of success on each of his claims.

29. *Breach of contract.* Mr. Adkisson is likely to succeed on his contract claim. Monster and Epik promised that in exchange for Mr. Adkisson using Epik's escrow services, Epik would hold Mr. Adkisson's funds in escrow. That's a binding agreement. Clearly, however, Epik did not hold Mr. Adkisson's funds in escrow, and as a result Mr. Adkisson has been damaged and unable to recover his Escrow Funds. That's a breach and resulting damages.

30. *Fraudulent misrepresentation.* Mr. Adkisson is likely to succeed on his fraudulent misrepresentation claim because the record—including e-mails, letters, and text messages—show that Defendants induced Mr. Adkisson to give Epik money under false pretenses. Specifically, the Defendants promised to perform escrow services even though they knew that Epik was not even *licensed* to perform such services, and that Epik had no intention of segregating the Escrow Funds. Epik also false represented to Mr. Adkisson that it would pay back the monies, all in an effort to delay Mr. Adkisson from taking legal action. Defendants' misrepresentations regarding their promises to return Mr. Adkisson's Escrow Funds also constitutes fraud.

31. *Breach of fiduciary duty.* "An escrow agent owes a fiduciary duty to the parties to the escrow to conduct the transaction with scrupulous honesty, skill and diligence, and must comply strictly with the provisions of the escrow agreement." *Styrk v. Cornerstone Invs., Inc.*, 61 Wn.App. 463, 472, (1991) (attorney acting as escrow agent had fiduciary duty to individual entrusting funds to escrow agent). Monster and Epik thus had a fiduciary duty to Mr. Adkisson when Monster represented that Epik would act as an escrow agent for Mr. Adkisson, asking Mr.

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Adkisson to entrust Monster and Epik with his money and after accepting the Escrow Funds to be held in escrow. Likewise, while Mr. Adkisson's Escrow Funds were still in the care of Epik, Royce took control of Epik's finances and business operations as Epik's CEO, and reiterated the promise to return Mr. Adkisson's funds to him if the domain name purchase did not go through. So, Royce, too, had had a fiduciary duty to Mr. Adkisson. There was also a clear breach of that duty. Defendants did not maintain Mr. Adkisson's Escrow Funds in escrow and certainly did not act with "scrupulous honesty, skill and diligence" when they misappropriated his funds and made false promises to repay him. Likewise, Defendants breached their fiduciary duties by failing to comply with the escrow instructions after Mr. Adkisson instructed Defendants to "wire the funds back" and "return the funds held in escrow." Mr. Adkisson is thus likely to succeed on his breach of fiduciary duty claim.

32. *Consumer Protection Act.* The elements to establish a violation of Washington's Consumer Protection Act, are (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) that impacts the public interest; (4) injury to his business or property; and (5) that the injury was proximately caused by the unfair or deceptive act. *Allstate Ins. Co. v. Tacoma Therapy, Inc.*, 204 F. Supp. 3d 1181, 1187–88 (W.D. Wash. 2016). It is hard to imagine a more straightforward CPA claim than this. This conduct is both unfair and deceptive, it occurred and is occurring in commerce, and clearly impacts the public interest as demonstrated by the numerous other consumers who have had their hard-earned money stolen by Defendants. Mr. Adkisson is likely to succeed on this claim as well.

33. *RICO claims.*

- a. The elements of a civil RICO claim for violating 18 U.S.C. § 1962(c) are:
  - “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as ‘predicate acts’) (5) causing injury to plaintiff’s ‘business or property.’” *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005).

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- 1 b. Violations of 18 U.S.C. § 1962(a) are similar and that section of the statute  
2 makes it unlawful for “any person who has received any income derived,  
3 directly or indirectly, from a pattern of racketeering activity ... to use or  
4 invest, directly or indirectly, any part of such income, or the proceeds of  
5 such income, in acquisition of any interest in, or the establishment or  
6 operation of, any enterprise which is engaged in, or the activities of which  
7 affect, interstate or foreign commerce.”  
8  
9 c. Mr. Adkisson is likely to succeed in proving the elements of both of these  
10 claims.  
11  
12 d. As to the first and second elements, the conduct at issue is being  
13 performed by an enterprise. An “enterprise” includes “any individual,  
14 partnership, corporation, association, or other legal entity, and any union  
15 or group of individuals associated in fact although not a legal entity.” 18  
16 U.S.C.A. § 1961. Epik, which Monster (its owner) and Royce (its CEO)  
17 are both working in furtherance of, constitutes an enterprise.  
18  
19 e. Mr. Adkisson is also likely to establish the third and fourth elements of his  
20 RICO claim. Defendants have engaged in a pattern of racketeering  
21 activities by committing wire fraud in order to effectuate their fraudulent  
22 scheme. Racketeering activities include wire fraud, and “‘pattern of  
23 racketeering activity’ requires at least two acts of racketeering activity[.]”  
24 18 U.S.C. § 1961(1), (5).  
25  
26 f. Here, it is evident that Defendants have committed several counts of wire  
27 fraud. First, Defendants fraudulently induced Mr. Adkisson to wire  
28 \$327,000 to Epik, claiming it would be held in escrow. Adkisson Decl.  
29 ¶ 3. Defendants knew, however, that Mr. Adkisson’s funds would not be  
30 held in escrow, and that Defendants were not even licensed to provide  
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escrow services. Perez Decl. ¶ 3. Instead, these actions were taken in furtherance of Defendants' scheme to induce Mr. Adkisson to wire the Escrow Funds to Epik, to defraud Mr. Adkisson, so Defendants could misappropriate the Escrow Funds. The communications with Mr. Adkisson, and the services provided by Epik for Mr. Adkisson to wire the Escrow Funds to Epik through Epik.com used wires as a means of transmission. That, too, constitutes wire fraud. *Stephens v. Marino White O'Farrell & Gonzalez*, No. C10-5820BHS, 2011 WL 3516082, at \*3 (W.D. Wash. Aug. 11, 2011) (emails, phone calls, and wire transfers sufficient to establish wire fraud to support RICO claim).

- g. Defendants' pattern of racketeering activity is further demonstrated by the numerous consumers that Defendants defrauded in similar ways to Mr. Adkisson and the numerous consumers they continue to defraud.
- h. Likewise, Mr. Adkisson is likely to succeed in establishing Defendants' violations of 18 U.S.C. § 1962(a). There is no doubt that Monster and Royce—Epik's owner and CEO—received "income derived, directly or indirectly, from a pattern of racketeering activity" and used it in connection with the operation of the Epik enterprise. After all, Epik received the Escrow Funds, failed to sequester those funds as promised, comingled the Escrow Funds with other consumers' funds Defendants misappropriated, and used the funds in connection with Epik, including to pay other debts.
- i. Mr. Adkisson is likely to prevail on his RICO claims.

34. *Unjust enrichment and conversion.* Defendants effectively concede liability as to both of these claims. Defendants admit that Epik received the Escrow Funds, that Epik owes Mr. Adkisson the balance of at least \$307,000 from the Escrow Funds, and that Mr. Adkisson has not

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1 been paid. Amended Answer ¶¶ 73. Epik also admitted that the Escrow Funds were used for  
 2 other purposes by Epik, other than those authorized by Mr. Adkisson. Perez Decl. ¶¶ 3-4. Thus,  
 3 Defendants have willfully and unlawfully retained Mr. Adkisson's escrow funds, and deprived  
 4 him of the funds. That's conversion. Defendants also knowingly received the benefit of the  
 5 Escrow Funds under circumstances that would be clearly inequitable to allow them to retain the  
 6 Escrow Funds. That's unjust enrichment. Mr. Adkisson is thus likely to succeed on both claims.  
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### 13 **B. Irreparable Harm.**

14 35. It is likely that Mr. Adkisson will be irreparably harmed if a temporary restraining  
 15 order is not issued.  
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18 36. Mr. Adkisson will be immediately and irreparably harmed if the asset fire sale  
 19 moves forward. "Where Plaintiffs seek an asset freeze, they must also show 'the likelihood of  
 20 dissipation of the claimed assets, or other inability to recover monetary damages, if relief is not  
 21 granted.'" *Kyko Glob., Inc. v. Prithvi Info. Sols., Ltd.*, No. 13-CV-1034, 2013 WL 12173381, at  
 22 \*4 (W.D. Wash. June 19, 2013) (Pechman, J.) (quoting *Johnson v. Coururier*, 572 F.3d 1067,  
 23 1085 (9th Cir. 2009); *Panyanouvong v. Aphyay*, 2:14-CV-00275 RSM, 2014 WL 2986507 (W.D.  
 24 Wash. July 1, 2014) (finding irreparable harm where defendants misappropriated plaintiff's  
 25 investment for defendants' personal gain). Courts find a likelihood of dissipation of assets if  
 26 there is evidence of a defendant fraudulently concealing assets. *See Dargan v. Ingram*, No. C08-  
 27 1714RSL, 2009 WL 1437564, at \*3 (W.D. Wash. May 22, 2009) (discussing, among other  
 28 things, large cash gifts from defendant's brother to his wife, and defendant's lies regarding his  
 29 income); *In re Focus Media Inc.*, 387 F.3d 1077, 1086 (9th Cir. 2004).  
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43 37. If Epik is allowed to proceed with its asset sale of "substantially all the assets"  
 44 owned by Epik, as it intends to do shortly, Mr. Adkisson, and the numerous other consumers  
 45 from whom Epik stole money will never be made whole. In fact, Mr. Monster himself disclosed  
 46 the day before this filing that the deal has been "*whittled down to a level insufficient to pay*  
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*everyone*," and part of "*an egregious pattern of side deals and self-dealing during the last 10-*  
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1 *months*” with the objective to “*wipe [Epik] clean.*” Perez Decl. Ex. M. And several months ago,  
 2  
 3 Mr. Royce—the current CEO driving the deal—“*gifted a bunch of Epik assets*” to unnamed  
 4  
 5 individuals with whom he is affiliated. *Id.*, Ex. L. That Mr. Monster himself—Epik’s founder,  
 6  
 7 majority owner, and a defendant in this very litigation—would candidly call the deal “*a badly*  
 8  
 9 *executed hijack operation,*” and that the company is “*being elusive*” about the true buyers, is  
 10  
 11 reason enough to grant the motion. *Id.*

12  
 13 38. Epik’s offer to Mr. Adkisson of a partial payment—and only if Mr. Adkisson  
 14  
 15 releases his claims—does not change this calculus. Mr. Adkisson should not be forced to accept  
 16  
 17 *less* than he is owed and less than what will make him whole—including his lost interest,  
 18  
 19 attorneys’ fees, and trebled damages from his RICO claims—simply to allow Epik to transfer its  
 20  
 21 assets and avoid liability.

22  
 23 39. Epik’s suggestion that there is no irreparable harm because Mr. Adkisson has a  
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 25 “veto” over the transaction. The Court rejects this argument as a red herring. If Mr. Adkisson’s  
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 27 strenuous objections to the deal fell on deaf ears, of course he has no veto. Besides, there is  
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 29 nothing stopping Epik from simply negotiating a different deal with the same buyer or another  
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 31 buyer altogether. The purpose of this motion is to stop Epik from liquidating its assets in a  
 32  
 33 manner that will prevent consumers like Mr. Adkisson from being made whole.

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 35 40. However, the more relevant upshot to Epik’s “veto” argument is that it  
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 37 demonstrates that no bond is needed for this injunction to issue. After all, if Epik is willing to  
 38  
 39 give Mr. Adkisson a “veto” without first posting a bond, then an injunction accomplishing the  
 40  
 41 same thing should not require a bond either.

42  
 43 **C. The balance of equities tilts in favor of Mr. Adkisson.**

44  
 45 41. To determine whether the balance of hardships favors the moving party, courts  
 46  
 47 must “balance the interests of all parties and weigh the damage to each.” *Kyko*, 2013 WL  
 48  
 49 12173381, at \*4 (“Prohibiting Defendants from transferring or dissipating funds without Court  
 50  
 51 approval—at least until they can be heard on the matter in the next ten days—is not a

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1 burdensome condition given that Defendants were not wholly engaged in a legitimate, lawful  
 2 business. Thus, the risk weighs more heavily in favor of Plaintiffs”); *Fed. Trade Comm'n v.*  
 3 *Arlington Press, Inc.*, 1999 WL 33574020, \*13 (C.D. Cal. 1999) (“[T]he benefit in protecting  
 4 consumers against potentially fraudulent activity, and securing for those who may have already  
 5 been injured some form of redress outweighs the harm that may be suffered by individuals  
 6 associated with the business.”).

7  
 8 The balance of equities tips sharply in favor of Mr. Adkisson. There is no dispute that  
 9 Epik owes him the funds at issue. If the asset sale continues, Mr. Adkisson faces a significant  
 10 risk that there will be *no funds or assets for him*, or for other consumers, to collect from  
 11 Epik. Defendants have a history of comingling funds, making misrepresentations, and not  
 12 following through on commitments. By misappropriating funds and assets in the past, *including*  
 13 *Mr. Adkisson’s*, Defendants have repeatedly shown that they are not engaged in any lawful or  
 14 legitimate business.

15  
 16 42. Defendants, meanwhile, have little legitimate interest in going forward with an  
 17 asset sale that the company’s own founder (and majority owner) describes as “a badly executed  
 18 hijack operation.” Perez Decl., Ex. M.

#### 19 **D. Issuing an injunction serves the public interest.**

20  
 21 43. Issuing a temporary restraining order clearly serves the public interest. “It is in  
 22 the public interest to prevent defendants in civil cases from avoiding liability or payment of  
 23 money judgments by secreting assets.” *Consumer Opinion LLC v. Frankfort News Corp*, 2016  
 24 WL 6804607, at \*5 (N.D. Cal. Nov. 17, 2016) (enjoining transferring of domain names to other  
 25 registrars and/or deleting material from those websites); *Kyko*, 2013 WL 12173381, at \*4  
 26 (finding that “preserving the status quo and preventing Defendants from transferring or  
 27 dissipating funds will advance the public interest”). Without the temporary restraining order,  
 28 Mr. Adkisson and other Epik customers face a significant risk that Defendants will dissipate  
 29 Epik’s assets as part of this transaction or any future transaction preventing customers from

30  
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1 recovering their misappropriated funds. *Neighborhood Assistance Corp. of Am. v. First One*  
 2 *Lending Corp.*, SACV120463DOCMLGX, 2013 WL 12113414 (C.D. Cal. Feb. 11, 2013)  
 3 (“freezing assets to preserve the possibility of an equitable remedy would clearly serve the public  
 4 interest, as ... disgorged profits will be used to make restitution to those people harmed by  
 5 Defendants' unlawful actions.”).

10 44. Absent a temporary injunction, Epik will continue misappropriating and  
 11 comingling funds as it has been doing for years. It is also in the public interest to preserve the  
 12 status quo and to protect Epik’s assets from distribution for Adkisson and for other consumers  
 13 who have fallen victim to Defendants’ ongoing schemes. *Federal Sav. and Loan Corp. v. Ferm*,  
 14 1989 WL 88415, \*5 (9th Cir. 1989) (finding evidence of fraud sufficient to show public interest  
 15 in preventing further injury). Allowing Defendants to continue with this transaction,  
 16 misappropriating funds, or dissipating assets serves no public interest.

25 **E. No bond is required.**

26 45. The court has discretion to dispense with the security requirement, or to request  
 27 the party in whose favor a temporary restraining order is entered to post mere nominal security,  
 28 where, as here, the likelihood of success on the merits tips in favor of a minimal bond or no bond  
 29 at all. *California ex rel. Van de Kamp v. Tahoe Regional Planning Agency*, 766 F.3d 1319,  
 30 1325-26 (9th Cir.), *amended on other grounds*, 775 F.3d 998 (9th Cir. 1985).

36 46. “Rule 65(c) invests the district court with discretion as to the amount of security  
 37 required, if any.” *Jorgensen v. Cassiday*, 320 F.3d 906, 919(9th Cir.2003) (internal quotations  
 38 omitted).

42 47. A strong likelihood of success on the merits also “tips in favor of a minimal bond  
 43 or no bond at all.” *People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Planning Agency*,  
 44 766 F.2d 1319, 1326 (9th Cir. 1985.); *Tran v. Muhammad*, CV 20-01433-CJC(SKX), 2021 WL  
 45 681128 (C.D. Cal. Jan. 15, 2021) (finding no bond required in granting preliminary injunction to  
 46 freeze assets given plaintiff “presented a strong likelihood of success on the merits”); *see also*

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1 *JUUL Labs, Inc. v. Chou*, CV 21-3056 DSF (PDX), 2021 WL 4900374 (C.D. Cal. June 9, 2021)  
 2  
 3 (setting \$25,000 bond to freeze over \$1 million in Defendants' assets). Given Mr. Adkisson's  
 4 strong likelihood of success on the merits, including Defendants' admission that he is entitled to  
 5 the relief he seeks, there is little risk that Defendants will be "wrongfully enjoined." This alone  
 6  
 7 should jettison the need for a bond.  
 8  
 9

10  
 11 48. Defendants' representation that Mr. Adkisson has a "veto" over potential asset  
 12 sale, a veto that Mr. Adkisson has undoubtedly exercised and will exercise if Defendants'  
 13 representations are genuine, confirms that entering a TRO will not harm Defendants. "The  
 14 district court may dispense with the filing of a bond when it concludes there is no realistic  
 15 likelihood of harm to the defendant from enjoining his or her conduct." *Panyanouvong*, 2014  
 16 WL 2986507 (W.D. Wash. July 1, 2014) (finding "the risk that Defendants would suffer  
 17 damages in the unlikely event of wrongful injunctive relief is minimal, as the injunction merely  
 18 preserves Defendants' assets during the pendency of this litigation[.]").  
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### 29 **III. TEMPORARY RESTRAINING ORDER**

30  
 31 Now, therefore, it is hereby ORDERED as follows:

32  
 33 1. Defendants Epik Holdings, Inc., Epik, Inc., Masterbucks LLC, Robert W.  
 34 Monster, and Brian Royce whether acting directly or through any corporation, partnership,  
 35 subsidiary, division, affiliate, their servants, agents, employees, or any other entity or person  
 36 acting on their behalf or for their benefit, and all other persons or entities in active concert or  
 37 participation with them who receive actual notice of this Order by personal service or otherwise,  
 38 are hereby temporarily enjoined from: transferring, liquidating, converting, encumbering,  
 39 pledging, loaning, selling, concealing, dissipating, disbursing, assigning, withdrawing, granting a  
 40 lien or security interest or other interest in, or otherwise disposing of any asset, or any interest  
 41 therein, wherever located, including outside the United States, that is owned by, controlled by, or  
 42 in the actual or constructive possession of, in whole or in part, any defendant or any other person  
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1 or entity, and is so held or controlled for the benefit of, or subject to access by, or belonging to,  
 2 any named defendant in this action or any other corporation, partnership, trust, foundation, or  
 3 any other entity directly or indirectly owned, managed, or controlled by, or under common  
 4 control with, any defendant, including, but not limited to, any assets held by or for any defendant  
 5 in any account at any bank or savings and loan institution, or with any credit card processing  
 6 agent, or any credit union, money market or mutual fund, trustee, or with any broker-dealer,  
 7 escrow agent, title company, commodity trading company, or other financial institution or  
 8 depository of any kind, whether within or outside the territorial United States, unless further  
 9 allowed by order of this Court.  
 10

11 2. Defendants shall answer in full all discovery requests by the 30-day deadline  
 12 imposed by Federal Rule of Civil Procedure 33(b)(2) and 34(b)(2)(A), and produce all  
 13 documents with a privilege log by June 26, 2023. Such answers shall include production of all  
 14 responsive, non-privileged documents on the same date along with a privilege log detailing any  
 15 documents withheld on privilege grounds.  
 16

17 3. Mr. Adkisson is granted leave to conduct depositions of Defendant Monster,  
 18 Defendant Royce, and Rule 30(b)(6) depositions of Epik Holdings, Inc., Epik, Inc., Masterbucks  
 19 LLC. Such depositions shall last no longer than four hours apiece and shall not count towards the  
 20 limits imposed by the federal rules. Counsel for defendants may object as to form only and for  
 21 privilege; otherwise, counsel may not interject with interruptions, speaking objections, or any  
 22 other non-privileged objection except “objection to form.” The depositions and expedited  
 23 discovery are necessary for the parties’ presentation at the preliminary injunction. Defendants are  
 24 ordered to make these witnesses available for their depositions during the month of July 2023.  
 25

26 4. A hearing on Mr. Adkisson’s motion for preliminary injunction shall be scheduled  
 27 after the parties have completed the depositions outlined above. The parties are to meet and  
 28 confer about scheduling the hearing and mutually present dates to the Court in a joint status  
 29 report due seven (7) days after the depositions have been completed.  
 30

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1 5. No bond is required.  
2

3 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.  
4  
5

6 \_\_\_\_\_  
7 United States District Judge  
8  
9

10  
11  
12 Presented by:  
13  
14  
15

16  
17  
18 s/ David A. Perez \_\_\_\_\_

19 David A. Perez, WSBA No. 43959

20 Christian W. Marcelo, WSBA No. 51193

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29 *Attorneys for Plaintiff Matthew Adkisson*  
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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury that on May 31, 2023, I electronically filed the foregoing PROPOSED TEMPORARY RESTRAINING ORDER with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorney(s) of record:

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I further certify that I caused service to be made on the following non-CM/ECF participants by the method(s) indicated:

Robert Monster  
*Pro Se*  
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☐ Via hand delivery  
☐ Via U.S. Mail, 1st Class, Postage Prepaid  
☐ Via Overnight Delivery  
☐ Via Facsimile  
☒ Via Email  
☐ Other: \_\_\_\_\_

DATED this 31st day of May, 2023.

s/ David A. Perez  
David A. Perez